CHAPTER SIX

DEFINING THE INTERNATIONAL LEGAL STATUS OF THE BALTIC STATES: STATE CONTINUITY OR STATE SUCCESSION?

§ 1. The Specificity of the Baltic Case

The discussion on the international legal status of the Baltic States reflects the distinction in international law between ‘state continuity’ and ‘state succession’. Whereas the first concept refers to cases where the same state continues to exist as a subject of international law despite changes of government, territory or population; the latter includes cases where sovereignty over a given territory is replaced by one state to another. State practice and legal doctrine prove that a temporary military occupation does not affect the continuity of a state. The German occupation of Austria and Czechoslovakia during the Second World War and the Italian invasion of Ethiopia and Albania provide classical examples of this practice. Parallel to the incorporation of the Baltic States into the Soviet Union, the existing governments were forced to accept an ultimatum under the threat of force. In Austria, even a referendum was organized to legitimise the incorporation into the German Reich. After the end of the World War, the Allied Powers declared the annexation of the respective countries illegal and confirmed the continuity of the pre-war states. A major difference with the situation of the Baltic States is, of course, the period of foreign occupation.

The fiction of continued statehood cannot be upheld *ad infinitum* but is limited by requirements of effectiveness. Subject to another principle of international law, that of *ex factis jus oritur*, a violation of international law should be regarded as legal once evidence of permanence

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265 On this distinction in international law, see: Stern, *op. cit.*, footnote 261, pp. 39–42.
is present. Marek argues that an application of the latter principle must not be presumed or admitted “except in the very last resort, when the normative pressure of facts has reached its summit and all reasonable chance of a restitutio ad integrum has disappeared for as long a period of time as can reasonably be assessed.” For reasons of stability in international relations, international law practice also reveals a strong presumption in favour of the continuity of established states. In this regard, German scholars refer to “Der Grundsatz der größmöglichsten Kontinuität”. This principle does not imply that every claim of state continuity has been recognized. For instance, the argument that the post-1918 states of Poland and Lithuania formed the continuation of the respective entities of the Polish-Lithuanian Commonwealth before 1875 found no recognition beyond the domestic sphere. Similarly, the Algerian position that the decolonised state of 1958 was legally identical to the Algerian state that had been subjugated by France in 1830 was not recognized. Clearly, a time gap of more than a century excludes the prospect of state continuity whereas for periods not exceeding a decade (as in the cases of Ethiopia, Czechoslovakia, Albania and Austria), state continuity can be presumed. The specificity of the Baltic case is that the foreign occupation has neither lasted ten nor hundred years but fifty years and, thus, illustrates the tension between the principles of legality (ex injuria non oritur jus) and effectiveness (ex factis jus oritur).

§ 2. Recognition of the Baltic Thesis on State Continuity

From the outset, supporters of Baltic independence focused on the illegality of the events of 1939–40 and claimed the legal continuity of the

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[269] *Ex factis jus oritur* means that “the law arises out of the facts”. In the words of Gerald Fitzmaurice, “the wrongful act of a state, without thereby ceasing to be wrongful, may become the basis of a new legal situation in which the wrongful act is accepted as a fact, and in relation to which even the State responsible for it may have certain rights”. G. Fitzmaurice, “The General Principles of International Law Considered from the Standpoint of the Rule of Law”, Académie de Droit International, Recueil des Cours (1957) II, p. 117.


